

A Futuristic Builders Sdn Bhd v Harinder Singh & Ors

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–1 OF 2007(W)

B ALAUDIN, ARIFIN ZAKARIA AND HASHIM YUSOFF FCJJ
15 JANUARY 2008

C *Contract — Joint venture — Joint venture agreement — Validity — Whether executor had locus to enter into agreement before granting letters of administration — Whether agreement valid and enforceable*

D *Sucession — Letters of administration — Grant — Executor entered into an agreement before granting of letters of administration — Whether executor had locus to enter into an agreement — Whether beneficiaries had rights to authorize executor to enter into agreement on behalf of the estate before letters of administration granted — Whether agreement binding on beneficiaries*

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A joint venture agreement was entered into by the Estate of Ujagar Singh s/o Bhagat Singh ('the estate') of the one part and the appellant on the other part. The agreement was entered into by the son of the deceased, Harinder Singh s/o Ujagar Singh ('sixth respondent') and the widow of the deceased, Kishen Kaur d/o Mihan Singh ('second respondent'). At the date of the execution of the agreement, letters of administration of the estate had not been issued. The letters of administration was only granted subsequent to the execution of the agreement and the sixth respondent was made the sole administrator of the estate. The beneficiaries of the estate however refused to proceed with the agreement. The appellant filed a claim against the administrator of the estate and eight others who were the beneficiaries of the estate, seeking, inter alia, specific performance of the agreement. The respondent counter claimed for, inter alia, a declaration that the agreement was null and void. The High Court allowed the appellant's application for specific performance but upon the appeal by the respondent, the Court of Appeal held that the agreement was null and void, and allowed the respondent's appeal. The appellant appealed to the Federal Court.

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Held, dismissing the appeal:

- (1) The agreement was expressly stated between the estate of the deceased on the one hand and the appellant on the other. No doubt the second

and sixth respondents did sign the agreement but at that time no letters of administration of the estate had been issued. Therefore the question arised in what capacity did they sign the agreement. It could not be in their capacity as administrators because no letters of administration had been issued on the date of the agreement and neither could it be in their personal capacity because the agreement was stated to be between the estate and the appellant (see para 23).

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- (2) The third, fourth, fifth, sixth, seventh, eighth and ninth respondents did not have any right to authorize the second and sixth respondents to enter into the agreement on behalf of the estate. It is only an administrator appointed under the Probate and Administration Act 1959 that will have the authority to do so (see para 27).

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- (3) Thus the second and sixth respondents were not competent to enter into the agreement on behalf of the estate. And neither could the agreement be binding on the beneficiaries because it was an agreement purportedly made between the Estate of Ujagar Singh and the appellant. The beneficiaries were not party to the agreement. It could not therefore be binding on them. The agreement in question was therefore invalid and unenforceable as against the respondents (see paras 27–28).

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[Bahasa Malaysia summary]

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Perjanjian usahasama telah dimasuki oleh Estate of Ujagar Singh s/o Bhagat Singh ('estet') di satu pihak dan perayu di pihak lain. Perjanjian tersebut telah dimasuki oleh anak lelaki si mati, Harinder Singh a/l Ujagar Singh ('responden keenam') dan balu si mati, Kishen Kaur a/p Mihan Singh ('responden kedua'). Pada tarikh penyempurnaan perjanjian tersebut, surat-surat pentadbiran estet tidak dikeluarkan. Surat-surat pentadbiran hanya diberikan berikutan penyempurnaan perjanjian tersebut dan responden keenam telah dijadikan pentadbir tunggal estet tersebut. Benefisiari-benefisiari estet itu bagaimanapun enggan meneruskan perjanjian itu. Perayu telah memfailkan satu tuntutan terhadap pentadbir estet dan lapan orang lain yang merupakan benefisiari-benefisiari estet itu, memohon, antara lain, pelaksanaan spesifik perjanjian tersebut. Responden telah membuat tuntutan balas untuk, antara lain, satu deklarasi bahawa perjanjian itu adalah terbatal dan tidak sah. Mahkamah Tinggi telah membenarkan permohonan pemohon untuk pelaksanaan spesifik tetapi semasa rayuan oleh responden, Mahkamah Rayuan memutuskan bahawa perjanjian itu adalah terbatal dan tidak sah, dan membenarkan rayuan responden. Perayu merayu ke Mahkamah Persekutuan.

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- A** **Diputuskan**, menolak rayuan tersebut:
- (1) Perjanjian itu dengan jelas menyatakan antara estet si mati di satu pihak dan perayu di satu pihak. Ia tidak diragui responden-responden kedua dan keenam telah menandatangani perjanjian itu tetapi pada masa itu tiada surat-surat pentadbiran estet tersebut dikeluarkan. Oleh itu persoalan timbul dalam kapasiti apakah mereka menandatangani perjanjian itu. Ia tidak mungkin dalam kapasiti mereka sebagai pentadbir-pentadbir kerana tiada surat-surat pentadbiran telah dikeluarkan pada tarikh perjanjian itu dan tidak mungkin dalam kapasiti mereka kerana perjanjian itu menyatakan ianya antara estet dan perayu (lihat perenggan 23).
- B**
- (2) Responden-responden ketiga, keempat, keenam, ketujuh, kelapan dan kesembilan tidak mempunyai apa-apa hak untuk memberi kuasa kepada responden-responden kedua dan keenam untuk memasuki perjanjian itu bagi pihak estet tersebut. Hanya pentadbir yang dilantik di bawah Akta Probat dan Pentadbiran 1959 yang mempunyai kuasa untuk berbuat sedemikian (lihat perenggan 27).
- D**
- (3) Oleh itu responden-responden kedua dan keenam tidak kompeten untuk memasuki perjanjian itu bagi pihak estet itu. Dan perjanjian itu tidak mengikat ke atas benefisiari-benefisiari tersebut kerana ia satu perjanjian yang dibuat antara Estet Ujagar Singh dan perayu. Benefisiari-benefisiari itu bukan pihak kepada perjanjian itu. Oleh itu ia tidak mungkin mengikat mereka. Perjanjian yang dipersoalkan adalah tidak sah dan tidak berkuat kuasa terhadap responden-responden (lihat perenggan 27–28).]
- E**
- F**

Notes

- G** For cases on grant of letters of administration generally, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2458–2465.
For cases on joint venture agreement, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 4299–4300.

Cases referred to

- H** *Chor Paik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 (refd)
Kersah La'Usin v Sikin Menan [1966] 2 MLJ 20 (refd)
Nik Mohamed Salleh v. Tengku Besar Zabidah [1971] 1 MLJ 73 (refd)
Noordin bin Mat Dom v Yahya bin Mohamed Jalit [1952] MLJ 17
- I** *Silimuthu v Amalu & Anor* [1983] 1 MLJ 190 (refd)
Tan Swee Lan v Engku Nik Binti Muda & Ors [1973] 2 MLJ 187 (refd)

Legislation referred to

Probate and Administration Act 1959 s 39

Appeal from: Civil Appeal No W-02-647 of 1998 (Court of Appeal, Putrajaya)

*Dato' BS Sidhu (Sharin Sidhu (BS Sidhu & Co) for the appellant.
Gurbachan Singh s/o Bagawan Singh (Bachan & Kartar) for the respondent.*

Arifin Zakaria FCJ (delivering judgment of the court):

[1] This appeal came before us on a single question of law which reads as follows:

Whether the joint venture agreement dated 5 October 1992 entered into by the appellant (of the one part) and by the second and sixth respondents (of the other part) before the grant of letters of administration and before distribution order is made is a valid and enforceable agreement and binding on all the respondents once the letters of administration are issued and distribution order is made and the parties to the joint venture agreement are in a position to specifically perform the joint venture agreement.

[2] After having heard arguments of counsel for the parties we adjourned the matter for our consideration and we now give our decision and reasons for the same.

THE BACKGROUND FACTS

[3] The claim by the appellant (plaintiff in the court below) arose out of the agreement dated 5 October 1992 ('the agreement') purportedly entered into by the Estate of Ujagar Singh s/o Bhagat Singh (deceased) ('the estate') of the one part and the appellant on the other part. The agreement relates to the development of two pieces of land namely, EMR 4092 lot 2767 and EMR 4093 Lot 2768, Mukim Setapak, Wilayah Persekutuan Kuala Lumpur. The joint-venture involved the construction of four 10-storey blocks of 20 residential units in each block and two 15-storey blocks with 30 residential units in each block. The estate will be entitled to 45 units which are referred to in the agreement as 'the Owner's Entitlement' while the balance to be allotted to the appellant as 'the Developer's Premises'. The agreement was entered into by Harinder Singh s/o Ujagar Singh, the son of the deceased, and Kishen Kaur d/o Mihan Singh, the widow of the deceased, the second and sixth respondents respectively. The question is in what capacity did they execute the agreement? It is not in dispute that at the date of the execution of the agreement, letters of administration of the estate had not been issued. It was only granted on 4 January 1994 and extracted on 12 May 1994. The second respondent was made the sole administrator of the estate. The beneficiaries refused to proceed with the agreement and hence this action.

- A** [4] The appellant filed this suit against the administrator of the estate and eight others, who are the beneficiaries of the estate in which the appellant prayed for the following orders:
- B** (i) an order that the defendants do apply to the High Court Kuala Lumpur for permission of the Court to transfer the said land mentioned in the joint venture agreement dated 5 October 1992 between Estate of Ujagar Singh s/o Bhagat Singh ('the owner') and Futuristic Builders Sdn Bhd ('the Developer') and that the defendants apply for leave of the said court to have the said lands transferred to the plaintiff and that the defendant shall make such application to the court within one month from the date of this order;
- C**
- (ii) specific performance of the joint venture agreement dated 5 October 1992;
- D**
- (iii) an order and/or a declaration that all the relevant documents are to be drawn within two weeks from the date of the order by the High Court by the defendant's solicitors, Messrs Inderjit Singh and/or any other solicitors to effect the transfer of the said lands held under EMR No 4092 Lot No 2767 and EMR No 4092 Lot 2768 both in the Mukim of Setapak, District of Wilayah Persekutuan measuring approximately 1 acre 3 rood 357 poles (collectively called 'the said Lands') to the plaintiff and if the defendants neglect or refuse or are out of jurisdiction, the Senior Assistant Registrar of the High Court Kuala Lumpur be directed to execute the same on behalf of the defendants;
- E**
- F**
- (iv) all necessary and consequential orders and directions as the honourable court may deem fit to provide;
- G**
- (v) damages for breach of contract in addition to specific performance, and the 'said lands' to be valued by a licensed valuer to be appointed by the plaintiff whose decision as to the market value of the said lands shall be binding on the parties to the joint venture agreement dated 5 October 1992;
- H**
- (vi) interest at 8% per annum on such damages from the 5 October 1992 until the date of realization and that the damages shall be calculated according to the valuation of the said lands by a licensed valuer on the date of the award;
- I**
- (vii) costs of this action to be taxed and to be paid by the defendants to the plaintiff;
- (viii) such further or other relief as the honourable court may deem fit to provide.

[5] In their counter claimed the respondents asked for the following orders: A

(i) for a declaration that the Joint Venture Agreement dated 5 October 1992 is hereby declared null and void;

(ii) alternatively for an order that the Joint Venture Agreement dated 5 October 1992 be rescinded. B

(iii) for an order that the two titles Kuala Lumpur GM 163 and 164 (EMR 4093 and 4092) for Lots 2767 and 2768 be returned to the defendants forthwith;

(iv) damages; C

(v) cost of this action;

(vi) such further and other relief as this honourable court may deem fit to provide. D

[6] The High Court allowed the appellant's application for specific performance coupled with the necessary consequential orders which do not concern us here as they stand or fall together with the order for specific performance. Against the orders of the High Court the respondents appealed to the Court of Appeal. E

THE PRINCIPAL ISSUE BEFORE THE COURT OF APPEAL

[7] The main challenge against the decision of the High Court is the refusal of the learned trial judge to consider the contention of the respondents that the agreement is invalid because it was executed before the grant of the letters of administration. This is what the learned trial judge have to say concerning the issue: F

5(1) In their statement of defence at paragraph 2 the defendants allege that the agreement is not valid because as it was signed before the letters of administration was issued there was no legally constituted person or entity existed to sign it on behalf of the estate. But at the trial this issue was not taken up by the defendants and it is manifestly clear from their counsel's written submission that they do not dispute the validity of the agreement on its inception and its binding effect on them. However, in their counsel's *further written submission*, they contend that the agreement is void and invalid on the ground that it was entered on a mutual mistake of fact. I decline to consider this issue because it is not pleaded. It is trite that the court only decides on the pleadings. G

(Emphasis added.) H

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A [8] On this issue the Court of Appeal was of the view that the failure of the learned counsel for the respondents to raise this issue in his submission does not preclude the learned trial judge from considering the issue. The Court of Appeal in their judgment stated thus:

B It is true that the submission by the learned counsel for the defendants does not touch at all on the issue of their pleadings at para 2 of the statement of defence, but more so, in the light of what was submitted by the learned counsel for the plaintiff as mentioned above taken together with the pleadings of the defendants and the evidence before it, the learned judge could not have ignored the defence
C of the defendants of invalidity and unenforceability of the joint venture agreement.

[9] On that premise the Court of Appeal proceeded to consider the issue and went on to hold that the agreement was null and void. The appellant was
D dissatisfied with the said decision and hence this appeal.

OUR DECISION AND REASONS

E [10] On the failure of counsel to submit on the validity issue, we are in agreement with the court of appeal that it should not preclude the learned judge from considering the issue as the issue is linked to the issue whether all the respondents could be taken to have signed the agreement on the strength of the letter of authorization of 21 May 1992. We will be referring to this letter in due course.
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[11] On the merit we need firstly to consider the agreement itself. It clearly states that the agreement is between the Estate of Ujagar Singh s/o Bhagat Singh and the appellant herein. The agreement was executed by the second and sixth respondents purportedly on behalf of the Estate of Ujagar Singh.
G It is not stated in what capacity they signed the agreement. The respondents contend that the agreement is not binding on the estate as on the date execution of the agreement no letters of administration had been issued. It follows therefore that the persons who purported to sign the agreement on behalf of the estate had no valid authority to do so. On that count alone the
H respondent contend that the appeal must fail. The appellants before us contend that the Court of Appeal erred in coming to its decision in failing to consider the facts of the case fully and the authorities applicable to this case.

I [12] It is submitted for the appellants that although the agreement was signed by the second and sixth respondents all the other respondents had given their consent to the same as evidenced by the document dated 5 October 1992 and the letter addressed to the appellants dated 27 June 1992. The material part of the first document reads:

This is to certify that we, the undersigned being heirs of the late UJAGAR SINGH do hereby agree to allow MADAM KISHEN KAUR D/O MIHAN SINGH I/C No 7972609 and HARINDER SINGH S/O UJAGAR SINGH I/C No 2999881 to act on our behalf on all matters regarding the properties, both moveable and immoveable, of the late UJAGAR SINGH S/O BHAGAT SINGH I/C No 3849341. Signed this 21 May in the year 1992.

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[13] This document was signed by all the beneficiaries other than the second and the sixth respondents.

[14] The relevant part of the letter of 27 June 1992 reads:

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RE: AGREEMENT FOR EMR NO 4092 LOT NO 2767 AND EMR NO. 4093 LOT NO 2768 MUKIM SETAPAK, DISTRICT OF WILAYAH PERSEKUTUAN

In consideration of you agreeing to enter into a joint venture agreement with the estate of Ujagar Singh s/o Bhagat Singh, we, the undersigned do hereby covenant and undertake to do the following:

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(i) that upon issuance of the letters of administration and probate for the Estate of Ujagar Singh, we hereby agree to and shall cause the administrators and/or executors to rescind the joint venture agreement for the above property dated 12 August 1989 with M/s Hup Hin Soon Sdn Bhd and we shall be absolved from all liabilities incurred or to be incurred under the joint venture agreement. Simultaneously with the rescission of the above joint venture agreement we shall execute a new joint venture agreement with you or your nominees to develop the aforesaid land;

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(ii) in the event there are any other beneficiaries other than those named below, then we shall cause the new beneficiaries to consent to the execution of the joint venture agreement between you or your nominees and the Estate of Ujagar Singh. However we shall be responsible for whatever consequences that may arise as a result of the new beneficiaries;

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(iii) to appoint Kishen Kaur d/o Mihan Singh and Harinder Singh s/o Ujagar Singh to be our authorized attorney to negotiate, deals with and sign any documents or agreements with you or your nominees.

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We state herein that our above undertakings and covenants shall be irrevocable.

Thank you.

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[15] The letter was addressed to the appellant.

- A [16] The letters of administration was granted on 4 January 1994 and in the interim the appellants had been paying all the outgoings relating to the lands. The distribution order was granted on 19 September 1994 and with that the appellants contend that the respondents became the registered proprietors of the land. In the circumstances the appellants claim the
- B respondents are therefore obliged to carry out the terms of the agreement. In support the learned counsel for the appellants cited a number of authorities which we will consider in due course. In the context of the present case we are of the view that it is pertinent to firstly consider what are the right and interest of a beneficiary over the asset of the estate. The leading case on this
- C is the case of *Chor Paik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188.

[17] In that case, following a number of authorities, the Federal Court stated the legal position as follows:

- D Based on the above commentaries, founded no doubt on analogous principle of law concerning testate succession, it is our conclusion that in law, a beneficiary under intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

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- [18] Learned counsel for the appellants argued that *Chor Paik Har* cannot apply to the facts in the present case for the following reasons. In that case he said the beneficiaries tried to convey their interest in the estate of the deceased before the administration of the estate was completed, that of course they
- F cannot do. Unlike in the present case the agreement is not to convey or transfer the right or interest of the beneficiaries in the estate but a joint venture agreement conditional upon the respondents obtaining the letters of administration for the estate. This he said is found in cl 14(b) of the agreement the relevant part of which reads:

- G (b) The Owner hereby represents and undertakes that within fourteen (14) days from the date of issue of the letters of administration and/or probate from the Court he will sign and execute all sale and purchase agreements relating to the Developers premises in escrow ...

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- [19] In other words the agreement is conditional upon the issue of the letters of administration. Upon the grant of letters of administration the respondents have the legal capacity to carry out the terms of the agreement and are therefore obliged to comply with the terms of the agreement.

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- [20] The appellants cited a number of authorities in support of its contention namely: *Nik Mohamed Salleh v. Tengku Besar Zabidah* [1971] 1 MLJ 73 a decision of the Federal Court. In that case the Federal Court upheld the decision of the High Court granting specific performance of the

agreement relating to land entered into by the beneficiaries (who were not the registered owner of the land at that time) so long as the land eventually got vested in any one of them. From the facts in that case the agreement was signed by the second and third defendants and one Nik Ti, since deceased. The learned judge in that case gave judgment for the plaintiff and in so doing pointed out that all the beneficiaries agreed before the settlement officer to the transfer of the land to the plaintiff and the fact that the land was subsequently transferred to the first defendant showed that it was their desire that the first defendant comply with the wishes of Nik Ti and the other two defendants by transferring the land to the plaintiff in accordance with the agreement. Gill FJ at p 76 observed as follows:

In my judgment the High Court was quite right in ordering specific performance of the sale agreement. This is clear from the following passage in the judgment of the Lord Chancellor (Lord Westbury) in *Holroyd v Marshall*:

... if a vendor... agrees to sell... property... of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards become possessed of property answering the description in the contract, there is no doubt that a Court of Equity would compel him to perform the contract, ... For if a contract be in other respects good and fit to be performed, and the consideration has been received, incapacity to perform it at the time of its execution will be no answer when the means of doing so are afterwards obtained.

[21] The learned counsel for the appellant also relied on the case of *Tan Swee Lan v Engku Nik Binti Muda & Ors* [1973] 2 MLJ 187 for the proposition that the beneficiaries are bound by the agreement entered by them even though at the date of the agreement the land was still part of the estate of one Engku Muda bin Engku Besar.

[22] On the other hand in *Noordin bin Mat Dom v Yahya bin Mohamed Jalit* [1952] MLJ 17, the agreement was that when the administration is completed the defendant would transfer the land in question to the plaintiff, and furthermore anyone of the beneficiaries cannot make claim to the land. When he signed the agreement he was the administrator of the estate of Mohamed Jalit, deceased. The court held that the defendant signed the agreement in his personal capacity and not as administrator of the estate. The court did not grant specific performance as the agreement was entered into in his personal capacity but instead awarded damages in lieu thereof (see also *Silimuthu v Amalu & Anor* [1983] 1 MLJ 190; *Kersah La'Usin v Sikin Menan* [1966] 2 MLJ 20).

[23] As may be observed the common thread in all these cases the agreements were entered into by the vendors in their capacity as beneficiaries. Unlike in the present case, where the agreement was expressly stated between

- A the estate of the deceased on the one hand and the appellant on the other. No doubt the second and sixth respondents did sign the agreement but at that time no letters of administration of the estate had been issued. Therefore the question arises in what capacity did they sign the agreement.
- B It cannot be in their capacity as administrators because no letters of administration has been issued on the date of the agreement and neither could it be in their personal capacity because the agreement was stated to be between the estate and the appellant.
- C [24] In holding the agreement invalid and unenforceable the Court of Appeal stated their reasons as follows:
- D Looking at the joint venture agreement, it was purportedly entered into between the Estate of Ujagar Singh and the plaintiff. Certain rights and interest in the estate by virtue of the agreement were to go to the plaintiffs through the hands of the sixth and the second defendants who put their respective signature to the agreement, not even for and on behalf of the estate but as having been signed by the estate. As for both of them, as of that date, they did not even have any valid title or interest in the said lands forming part of unadministered property of the deceased. Having no such title or interest in the said lands they were not in the legal position to pass on any interest to the plaintiff by virtue of the joint venture agreement. On such findings, our firm view is that the said joint venture agreement is invalid and unenforceable. In the view that we take, there is no alternative for us but to say that the claim by the plaintiff against the defendants must fail.
- E The learned judge recognized as a fact that the agreement was signed by the sixth and the second defendants before the issue of the letters of administration to the Estate of Ujagar Singh. But we disagree with the learned judge that it was signed as the authorized representatives of the defendants, for the reason stated earlier. From the wordings of the agreement, we cannot see any connection between it and the two letters respectively of 21 May 1992 and 27 June 1992. Going with that premise in mind, the learned judge went into the merit ignoring the evidence and para 2 of the statement of defence put up by the defendants when he said thus at para 5 of his judgment:
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- G
- H 5(1) In their statement of defence at paragraph 2 the defendants allege that the agreement is not valid because as it was signed before the letters of administration was issued there was no legally constituted person or entity existed to sign it on behalf of the estate. But at the trial this issue was not taken up by the defendants and it is manifestly clear from their counsel's written submission that they do not dispute the validity of the agreement on its inception and its binding effect on them. However, in their counsel's further written submission, they contend that the agreement is void and invalid on the ground that it was entered on a mutual mistake of fact. I decline to consider this issue because is it not pleaded.
- I

[25] We agree entirely with the view expressed by the Court of Appeal. This is in line with the provision of s 39 of the Probate and Administration Act 1959 which reads:

39(1) Where a person dies intestate his movable and immovable property until administration is granted in respect thereof shall vest in the Corporation* in the same manner and to the same extent as it vests in the Probate Judge in England.

(2) On the making of an order for a grant of administration by the Court all such property shall vest in the administrator.

(*Note: Before 1st August 1995, the word 'Corporation' reads 'Official Administrator')

[26] Clearly the lands only became vested on second respondent when letters of administration was granted to him by the court on 4 January 1994.

[27] Further we agree with the Court of Appeal that the document of 21 May 1992 and the authorization letter of 27 June 1992 could not assist the appellant in the present case. This is because the third, fourth, fifth, sixth, seventh, eighth and ninth respondents do not have any right to authorize the second and sixth respondents to enter into the agreement on behalf of the estate. It is only an administrator appointed under the Probate and Administration Act 1959 that will have the authority to do so. Until the grant of letters of administration is made no body has the authority to act on behalf of the estate. Thus the second and sixth respondents were not competent to enter into the agreement on behalf of the estate. And neither could the agreement be binding on the beneficiaries because it was an agreement purportedly made between the estate of Ujagar Singh and the appellant. The beneficiaries were not party to the agreement. It could not therefore be binding on them.

[28] Reverting to the question posed we would endeavour to answer it in the following manner. The second and sixth respondents could not have entered into the agreement on behalf of the estate without the grant of the letters of administration. Therefore we would hold the agreement in question invalid and unenforceable as against the respondents. Thus on the facts of the present case our answer to the question posed to us would be in the negative.

[29] In the result we would dismiss this appeal with costs.
Appeal dismissed.

Reported by Brendan Navin Siva